

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TACORI ENTERPRISES,
Plaintiff,
vs.
HUNG PHAT USA,
Defendant.

Case No. CV12-09413 DSF (VBKx)

PROTECTIVE ORDER

Pursuant to the stipulation for entry of a protective order governing confidentiality of the parties, and for good cause shown,

IT IS ORDERED that the parties' stipulation is approved and shall be the Order of the Court as follows:

1. This Order governs the treatment of documents,¹ transcripts of and exhibits to depositions, interrogatory answers, responses to requests for admissions, and other written, recorded, or graphic material, including all copies, excerpts, abstracts, or summaries thereof (collectively, "Discovery Material"), produced, filed with the Court, served, or obtained by any party or non-party in this action (collectively, "Person(s)"). The parties do not waive in any manner, their rights and remedies under Rule 26(b) of the Federal Rules of Civil Procedure.

¹ The term “document” as used herein shall include any “documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained” See Federal Rules of Civil Procedure 34(a).

1 2. Any Person shall have the right, before disclosure to other parties, to
2 designate as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES
3 ONLY" any Discovery Material it produces or provides that the party and an
4 attorney or legal assistant on behalf of the party in good faith believe constitutes,
5 reflects or discloses its trade secrets or other confidential research, development,
6 or commercial information within the scope of Fed. R. Civ. P. 26(c)(1)(G).

7 3. Discovery Material designated as "CONFIDENTIAL" shall be
8 limited to Discovery Material that the designating Person believes in good faith
9 must be held confidential to protect business or commercial interests.

10 4. Discovery Material designated as "CONFIDENTIAL -
11 ATTORNEYS' EYES ONLY" shall be limited to Discovery Material that the
12 designating Person believes in good faith is so commercially sensitive or
13 confidential that the disclosure to employees, principals, and/or officers/directors
14 of another party, even under the restricted terms and conditions applicable to
15 material designated "CONFIDENTIAL," would not provide adequate protection
16 to the interests of the producing Person.

17 5. All Discovery Material designated as either "CONFIDENTIAL" OR
18 "CONFIDENTIAL - ATTORNEYS' EYES ONLY," and all information derived
19 therefrom, shall be referred to in this Protective Order as "Designated Material"
20 and shall be handled in strict accordance with the terms of this Protective Order.
21 Specifically, absent an order by this Court, such Designated Material shall be
22 used by the parties to this action solely in connection with this action or any
23 appeal therefrom, and not for any other purpose, or any business, patent
24 prosecution, competitive, or governmental purpose or function, and such
25 Designated Material shall not be disclosed to anyone except as provided herein.
26 Designated Material may be disclosed only under the circumstances and to the
27 persons specifically provided for in this Protective Order or any subsequent Court
28 order, or with the explicit written consent of the designating Person with respect
to specifically identified Designated Material.

29 6. Discovery Material designated as "CONFIDENTIAL" or
30 information derived therefrom may be disclosed, shown, or made available, or
31 communicated in any way only to the following persons:

32 a. attorneys for the parties to this litigation, including in-house
33 attorneys for the parties, and including persons working solely in
34 secretarial, clerical, and paralegal capacities, and who are providing
35 assistance to counsel in this action;

36 b. qualified persons taking testimony involving Designated
37 Material, and necessary stenographic, videographic, and clerical personnel
38 thereof;

39 c. consultants or experts and their staff who are employed for the
40 purposes of this litigation, provided that the provisions of Paragraphs 11

1 and 12 of this Protective Order are complied with prior to any disclosure of
2 any Designated Material to such an expert or consultant;

3 d. the Court and the Court's staff pursuant to Paragraph 14 of
this Protective Order;

4 e. the parties and employees of the parties, but only to the extent
5 necessary to participate in, assist in and monitor the progress of this action
and for no other purpose;

6 f. third-parties specifically retained to assist outside counsel in
7 copying, imaging, and/or coding of documents but for that purpose only,
provided that all such confidential documents are kept and maintained in a
8 separate and secure place and that the third party retained to copy, image,
or code confidential documents is not currently performing any services,
either as an employee, consultant, or otherwise for any competitor of either
9 party to this action or for one having any interest adverse to either party to
10 this action;

11 g. witnesses deposed in this action or who are called as witnesses
12 at any hearing in this action, but only as set forth in Paragraph 15 of this
13 Protective Order and Order.

14 7. Discovery Material designated as "CONFIDENTIAL -
15 ATTORNEYS' EYES ONLY" or information derived there from may be
16 disclosed, shown, or made available, or communicated in any way only to the
following persons: the persons identified in paragraphs 6(a)-6(d), and 6(f)-6(g) of
this Protective Order;

17 8. Designated Material shall be so designated by marking or stamping
18 such material "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES
19 ONLY" at such time the material is disclosed, or as soon thereafter as the person
or entity seeking the protection becomes aware of the nature of the material
20 disclosed and sought to be protected.

21 9. Where Discovery Material is produced for inspection before being
sent to the receiving party, the producing party shall have the right to have
22 persons present in the inspection room at all times during the receiving party's
inspection of such Discovery Material. If the producing party does have a person
23 present in the inspection room during inspection by the receiving party, another
room nearby shall be set aside for the receiving party's counsel to confer. All
Discovery Material produced for inspection and the information contained therein
24 shall be treated by the receiving party as "CONFIDENTIAL - ATTORNEYS'
25 EYES ONLY" prior to the receiving party's receipt of copies of the material.
Upon such receipt of copies, the designation indicated on the copy, if any, shall
26 be the operative designation.

27 10. Any deposition testimony may be classified as Designated Material
28 by indicating on the record at the deposition that the examination or testimony

1 discloses Designated Material under the terms of this Protective Order. The
2 portions of the original deposition transcript, exhibits, and all copies of exhibits
3 thereto that contain material so designated shall be separately bound and
4 prominently marked with the appropriate designation on the cover thereof and, if
5 and when filed with the Court, the confidential portions of such transcripts shall
6 be filed pursuant to Paragraph 14 of this Protective Order.

7 11. All persons described in Paragraph 6(c) and 6(e) of this Protective
8 Order to whom Designated Material is disclosed or by whom Designated Material
9 is used, including parties, non-parties, and their representatives, shall be informed
10 of and agree to be bound by the terms of this Protective Order and shall take all
11 necessary precautions to prevent any disclosure or use of Designated Material
12 other than as authorized by this Protective Order.

13 a. Prior to disclosing Designated Material to any person,
14 described in Paragraph 6(c) and 6(e) of this Protective Order, the disclosing
15 party shall obtain from such person a written acknowledgment,
16 substantially in the form of Exhibit 1 attached to this Protective Order, that
17 such person has reviewed a copy of this Protective Order and any
18 subsequent Protective Order issued by the Court, will comply with their
19 terms in all respects, and will submit to the jurisdiction of this Court for
20 adjudication of any dispute about whether such person has complied with
21 the terms of this Protective Order and any subsequent Protective Order
22 issued by the Court. In addition, prior to dissemination by a receiving
23 party, or its counsel of record, of any Designated Material to any person
24 described in Paragraph 6(c) and 6(e) of this Protective Order, the
25 disseminating party shall obtain and maintain a copy of this
26 acknowledgement evidencing that such person has executed the
27 undertaking set out in this Paragraph 11.

28 b. Individuals who are authorized to review Designated Material
pursuant to this Protective Order shall hold the Designated Material and its
contents in confidence and shall not divulge the Designated Material or its
contents, either verbally or in writing, except as expressly permitted by this
Protective Order, unless authorized to do so by a further Order of this Court
or as specifically required by law.

12. During the course of this action, a party may be requested to produce
2 to another party Discovery Material subject to contractual or other obligations of
3 confidentiality owed to a non-party by the party receiving the request. The party
4 subject to such contractual or other obligation of confidentiality shall timely
5 contact the non-party to determine whether such non-party is willing to permit
6 disclosure of the confidential document or information under the terms of this
7 Protective Order. If the non-party is willing to permit the disclosure of the subject
8 material to the requesting party, the documents shall be produced in accordance

1 with this Protective Order. If the non-party is not willing to permit disclosure of
 2 the confidential document or information under the terms of this Protective Order,
 3 the demanding party in the litigation shall be notified and any documents
 4 withheld on the basis of such contractual or other confidentiality obligation shall
 5 be identified on a separate index stating the reason for withholding the document
 6 and the person to whom the obligation of confidentiality is owed. This Protective
 7 Order shall not preclude any party from moving the Court for an order compelling
 8 production of such material nor shall it preclude any party from asserting any
 9 other legal basis to withhold the requested information and materials.

10 13. All Discovery Material designated “CONFIDENTIAL” or
 11 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” shall be kept in secure
 12 facilities, and access to those facilities shall be permitted only to those respective
 13 persons set forth in Paragraphs 6 and/or 7 of this Protective Order.

14 14. If Discovery Material designated “CONFIDENTIAL” or
 15 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” is filed with the Court upon
 16 approval or order by the Court as part of any pleading or as evidence, the filing
 17 party shall follow the proper procedures and local rules to file the material under
 18 seal.

19 15. Witnesses deposed in this action or who are called as witnesses at
 20 any hearing in this action may be shown Designated Material by an attorney but
 21 only (1) in preparation for the deposition or hearing, or (2) during the deposition
 22 or hearing, and only under the following circumstances:

23 a. any witness may be shown Designated Material in which the
 24 witness is identified as a originator, signatory, author, addressee, or
 25 recipient of the original or a copy;

26 b. a current officer, director, or employee of a designating Person
 27 may be shown that party’s Designated Material;

28 c. any witness selected by a designating Person to provide
 29 testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil
 30 Procedure may be shown that party’s Designated Material;

31 d. a former officer, director, or employee of a designating Person
 32 may be show that party’s Designated Material if it appears from the face of
 33 the Designated Material that the witness previously had access to the
 34 Designated Material while employed by the designating Person, provided
 35 that counsel making such disclosure shall inform the witness that the matter
 36 is confidential and may not be disclosed or used except as provided in this
 37 Protective Order and Order.

38 e. Any witness who fits the definitions set out in Paragraphs 6(a),
 39 6(c), and 7 if an Exhibit 1 Undertaking has been signed.

40 16. A designating Person that inadvertently fails to mark Designated
 41 Material as “CONFIDENTIAL” and/or “CONFIDENTIAL - ATTORNEYS’

1 EYES ONLY" at the time of the production shall promptly notify the receiving
 2 party of its failure and correct it. Such correction and notice thereof shall be made
 3 in writing, accompanied by substitute copies of each Discovery Material
 4 appropriately marked as "CONFIDENTIAL" and/or "CONFIDENTIAL -
 5 ATTORNEYS' EYES ONLY." Within five (5) days of receipt of the substitute
 6 copies, the receiving party shall return or destroy the previously unmarked
 7 materials and all copies thereof, and make reasonable efforts to retrieve
 8 documents distributed to persons not entitled to receive documents

9 17. Counsel attending a deposition who inadvertently fails to designate
 10 any portion of the transcript as "CONFIDENTIAL" and/or "CONFIDENTIAL -
 11 ATTORNEYS' EYES ONLY" on the record at the deposition shall have fifteen
 12 (15) days following the mailing of the transcript by the court reporter in which to
 13 correct his or her failure. Such correction and notice thereof shall be made in
 14 writing to the reporter, with copies to all other counsel, designating the portion(s)
 15 of the transcript that contain confidential information and directing the reporter to
 16 mark that portion of the transcript accordingly.

17 18. If Designated Material is disclosed to any person other than in the
 18 manner authorized herein, the party responsible for the disclosure must
 19 immediately bring all pertinent facts relating to such disclosure to the attention of
 20 all interested parties, and without prejudice to other rights and remedies of the
 21 designating party, and shall make every effort to prevent further disclosure by it
 22 or by the person who was the recipient of such information.

23 19. If at any time during the pendency or trial of this action, counsel for
 24 any party claims that Designated Material is not appropriately so designated,
 25 objecting counsel may serve a captioned notice of objection on all parties and
 26 affected entities, identifying with particularity the Designated Material as to
 27 which the designation is challenged, stating the basis for each challenge, and
 28 proposing a new designation for such materials. If the designating Person does
 not redesignate the materials within five (5) business days after service, the
 objecting entity may file and serve a motion seeking an order that such materials
 be redesignated, in which case the designating Person shall have the burden of
 proving that the original designation was appropriate. The original designation
 shall remain effective until three (3) business days after entry of an order
 redesignating the materials. The court may award sanctions on any motion
 concerning the designation if it finds that any party's position with respect to the
 designation was taken without substantial justification. The failure of any party to
 challenge any designation by any other party shall not constitute a waiver of the
 right to challenge the designation at a later time nor an admission of the
 correctness of the designation.

29 20. Unless the parties stipulate otherwise, evidence of the existence or
 30 nonexistence of a designation under this Protective Order shall not be admissible

1 for any purpose, nor shall the designation or acceptance of any information
2 designated pursuant to this Protective Order constitute an admission or
3 acknowledgment that the material so designated is in fact proprietary,
4 confidential, or a trade secret.

5 21. Notwithstanding any other provision of this Protective Order to the
6 contrary, the confidentiality obligations of this Protective Order shall not apply or
7 shall cease to apply to any information that:

8 a. at the time of disclosure hereunder, was already in the public
9 domain by publication or otherwise;

10 b. since the time of disclosure hereunder, has become, through
11 no act or failure on the part of the receiving party, part of the public domain
12 by publication or otherwise;

13 c. at the time of disclosure, was already in the possession of the
14 receiving party and was not acquired directly or indirectly from the
15 designating Person or from any third party under obligation of confidence
16 to the designating Person;

17 d. after disclosure hereunder, was acquired by the receiving party
18 from a third party lawfully possessing the same and having no obligation to
19 the designating Person hereunder; or,

20 e. the designating Person agrees may be disclosed to a third party
21 under no obligation of confidentiality.

22 The party claiming that he or she is relieved of the obligations of this
23 Protective Order by operation of any of Paragraphs 21(a)-(e) shall have the
24 burden of proving that any of the provisions of Paragraphs 21(a)-(e) apply.

25 22. Upon the termination of this proceeding, this Protective Order shall
26 continue to be binding upon the parties hereto, and upon all persons to whom
Designated Material has been disclosed or communicated, and this Court shall
retain jurisdiction to enforce this Protective Order.

27 23. Subject to final order of the Court upon completion of all matters
28 relating to this case, within sixty (60) days after entry of any final and
unappealable judgment in this litigation, any and all Discovery Material and all
copies thereof, save those filed with the Court, shall be returned to the producing
Person or, at the option of the producing Person, destroyed, provided however,
counsel for each party shall be permitted to retain and archive Discovery Material
that is contained in files ordinarily maintained in the course of litigation. If
Discovery Material is destroyed pursuant to this paragraph, the party destroying
such Discovery Material shall certify in writing to the producing Person that such
destruction has taken place.

29 24. Nothing in this Protective Order shall limit or restrict the manner in
30 which any party shall handle its own Discovery Material.

25. This Protective Order is being entered without prejudice to the right of any party to move to the Court for modification of or relief from any of its terms.

26. When any third party produces documents or testimony pursuant to a request from a party in this matter:

a. Such third parties may designate their testimony or documents as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" pursuant to this Protective Order and any subsequent Protective Order issued by the Court;

b. Any party receiving such documents or testimony from a third party may designate any such documents or testimony as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" pursuant to this Protective Order and any subsequent Protective Order issued by the Court, provided that the designating party has a direct interest in placing such documents or testimony under the confidentiality provisions of this Protective Order and any subsequent Protective Order issued by the Court as defined in paragraphs 3 and 4;

c. Paragraph 6 shall apply to any designation as "CONFIDENTIAL" by any designating Person of any documents or testimony received from third parties, and Paragraph 7 shall apply to any designation as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" by any designating Person of any documents or testimony received from third parties.

Dated: May 10, 2013

/s/
Hon. Victor B. Kenton
United States Magistrate Court Judge

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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 TACORI ENTERPRISES,
16 Plaintiff,
17 vs.
18 HUNG PHAT USA,
19 Defendant.

20 Case No. CV12-09413 DSF (VBKx)
21 **CONFIDENTIAL UNDERTAKING**
22 **REGARDING CONFIDENTIAL**
23 **DISCOVERY MATERIAL**

24 My name is _____. My home address is _____.
25 I am employed as (state position) _____
26 at (state name and address of employer) _____
27

28 1. I have read the Stipulation and Protective Order Regarding
29 Confidential Information and a copy of it has been given to me. I understand the
30 provisions of this Order, and agree to comply with and to be bound by its
31 provisions.

32 2. I further agree to submit to the jurisdiction of this Court for
33 adjudication of any dispute regarding my compliance with the terms of this
34 Stipulation and Order.

35 3. I declare under penalty of perjury under the laws of the United States
36 of America that the foregoing is true and correct.

37 4. Executed this _____ day of _____, 2013, at
38 _____.

39 5.

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1 6. _____

2 _____

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